
ADMINISTRATIVE TRIBUNAL

Judgement No. 450

Case No. 474: TEBEJE

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, Vice-President, presiding;
Mr. Samar Sen; Mr. Ioan Voicu;

Whereas, on 15 October 1987, Mulusew Tebeje, a staff member
of the United Nations, filed an application which did not fulfil all
the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant, after making the necessary
corrections, again filed the application on 3 August 1988;

Whereas the pleas of the application read as follows:

- "(a) It is my most humble plea that this Administrative
Tribunal may order that the recommendations of the Joint
Appeals Board be put into effect ...
- (b) It is also my prayer that this Honourable Administrative
Tribunal may re-affirm the decision by the Secretary-
General of the United Nations under letter dated
20th January, 1987 ...
- (c) It is my plea that this Tribunal Orders that my Inter-
national Status be accorded back to me with all my
International benefits to be paid to me immediately;
that my benefits be calculated from the time these
benefits were denied of me.
- (d) I humbly pray that this Tribunal sets out directives to
the Administrative Director of the ECA [Economic
Commission for Africa] office that decisions based upon
(a) (b) and (c) above must be complied with henceforth;

that failure will invite the necessary administrative disciplinary action the person or persons rendering such directives impossible.

(e) It is my very serious plea that this Administrative Tribunal orders that my salary from the United Nations and other benefits such as accelerated home leave, medical payment, rental subsidies etc. be paid directly to me without the same being incorporated into Lusaka GS. Scale and paid in local currency, as I am not a local staff.

(f) I humbly pray that I be paid my entitlements as an International Member of Staff from the time all these benefits were denied of me.

(g) Further, it is my plea that I be refunded all monies I have spent on my family's sustenance since being denied International status. Such expenses include:

(i) My unpaid medical expenses for myself, my wife, and my two children ...

(ii) My unpaid medical evacuation treatment for 16 days in Harare, Zimbabwe ...

(iii) My unpaid extended installation grant for 28 days DSA [Daily Subsistence Allowance] from 3rd March, 1980 until May 1980; and for 58 days stayed in a hotel in Lusaka ...

(iv) Further, I pray also that I be paid accelerated home leave entitlements and my travel expenses be refunded for the travel expenses round trip ticket from Lusaka to Addis Ababa and back to Lusaka. As for my accelerated home leave entitlements I seek redress retroactively as from 1st March, 1980 being the date when the same was denied of me by the ECA office.

(v) The Panel recommendation for two months net pay (at current rates and including International recruitment allowances) in compensation for the sudden loss of income and for length of time was improperly deprived of my entitlements ...

(vi) In addition, it is my sincere plea that I also be refunded all my rental subsidy paid by me personally to the Zambian Government after ECA Administration refused to grant me my International entitlement as from 15th March, 1983.

...

- (h) It is also my plea that this Honourable Tribunal orders that the ECA resumes its payments for my accommodation which has now increased to way over 600% owing to inflation.
- (i) I pray that this Tribunal Orders that I be granted office accommodation and my job description card unconditionally by the ECA office.
- (j) It is my plea also, that this Tribunal Orders that I be paid retroactively compensation monies in lieu or in addition to all my entitlements denied of me as from my transfer date in March, 1980.
- (k) I seek an order from this Administrative Tribunal that in addition to the above claims, this Tribunal should order that I be promoted to professional category, if not GS 9 and transferred to another office within the United Nations system but not Addis Ababa. This transfer may be considered purely on humanitarian grounds to save me and my family from calculated danger."

Whereas the Respondent filed his answer on 30 December 1988;
Whereas the Applicant filed written observations on 1 March 1989;

Whereas, on 23 March 1989, the President of the Tribunal requested the Respondent, under article 10 of the Rules of the Tribunal, to submit comments on the Applicant's written observations dealing particularly with the factual aspects of the case;

Whereas the Respondent submitted such comments on 3 May 1989;

Whereas the facts in the case are as follows:

The Applicant, a national of Ethiopia, entered the service of the Economic Commission for Africa (ECA) on 21 May 1970 as a locally recruited Statistical Computer in the Statistics Division, under a fixed-term appointment at the G-6 level which was extended from time to time and converted to a probationary appointment on 1 April 1977.

He was promoted to the G-7 level on 1 August 1975 and received a permanent appointment on 1 January 1978.

On 22 October 1977 the Applicant reported to the Chief Security Officer of ECA that the night before he had been the target of an assassination attempt by a group of unknown armed people. During the investigation which followed, he was detained by the Ethiopian authorities. On 24 October 1977 the Secretariat of ECA protested against that action in a note verbale to the Ministry of Foreign Affairs of Ethiopia and the Applicant was released on 2 November 1977. On 13 March 1978 the Applicant, who since his release had been living in the ECA compound, requested a transfer to one of ECA's sub-regional offices for reasons of safety. His transfer to the Lusaka (Zambia) sub-regional office was approved. On 30 July 1978, however, he was arrested at the airport while en route to his new duty station and detained until 5 October 1978. On 26 December 1978 the Chief of the Personnel Section informed the Applicant that the Executive Secretary had decided that there was no longer any need for his move to Lusaka. On 2 January 1979 the Applicant asked the Executive Secretary to reconsider the decision because his life was in jeopardy. The Executive Secretary granted the Applicant's request and on 1 March 1980 the Applicant was transferred with his post to the Lusaka sub-regional office with entitlement to a non-resident's allowance and an installation grant.

On 2 May 1980 the Applicant asked to be transferred to New York to improve his career prospects and because he felt threatened in Lusaka. On 19 June 1980 he was informed that such a transfer was impossible since in New York statistical clerks were recruited locally. On 23 November 1980 the Applicant complained of his working conditions and reiterated his request for a transfer. On 5 February 1981 he wrote to the Executive Secretary of ECA complaining that he was not treated fairly. On 3 April and 27 June 1981 he again asked to be reassigned on the grounds that he felt insecure and unprotected in Lusaka. On 30 July 1982 the Director of the Statistics Division of ECA asked that the Applicant be transferred to the budget of the Lusaka sub-regional office so that

the post encumbered by him could be returned to the Statistics Division. On 22 October 1982 the Chief of the Personnel Section informed the Applicant that he would be transferred back to Addis Ababa and placed in the Statistics Division effective 1 January 1983. On 10 November 1982 the Applicant asked the Executive Secretary to reconsider that decision, recalling that it was to save his life that he had been moved from Addis Ababa to Lusaka. On 3 February 1983 the Chief of the Personnel Section sent him a memorandum reading in part:

"I refer to my inter-office memorandum of 22 October 1982 in which you were informed of the decision to reassign you to Addis Ababa with effect from 1 January 1983.

...

The decision to reassign you was arrived at taking into account the new relaxed political atmosphere in Addis Ababa which we thought was conducive to your return as well as the need to return your post to the Statistics Division which has, since your assignment to Lusaka, been deprived of the post. I am sure that you will recall that you were sent to Lusaka not because your expertise was needed there but on humanitarian grounds because of certain events at that time.

We felt that since the Statistics Division needed its post back to function more effectively and since the situation in the country had improved considerably since your departure, you should return to the Statistics Division in Addis Ababa.

However, after considering your appeals, it has now been decided that the only alternative to your return to Addis Ababa would be to transfer you, on humanitarian grounds, to Lusaka as a locally-recruited staff member with effect from 15 March 1983. This will imply the loss of the privileges and allowances you now get in Lusaka as an international recruit.

I would like to stress again that we have taken all aspects of the case into consideration before reaching this decision which we consider the best in the circumstances.

I would be grateful if you could inform me as soon as possible whether you would like to return to Addis Ababa or to be transferred to Lusaka as a local staff member."

In communications addressed to the Executive Secretary on 21 and

26 February 1983 and to the Secretary-General on 26 February 1983, the Applicant requested a review of that decision. On 24 March 1983, however, a Personnel Action form was issued, effective 15 March 1983, to change the Applicant's status from international to local and to discontinue his entitlement to non-resident's allowance, home leave, repatriation grant and education grant.

On 15 April 1983 the Applicant lodged an appeal with the Joint Appeals Board at Headquarters. The Board adopted its report on 11 April 1986. The Board's conclusions and recommendations read as follows:

"Conclusions

47. The Panel concludes:

- (1) That the administration had responded with compassion in transferring the appellant to Lusaka in 1980 and should be commended;
- (2) That, in 1983, the administration had shown a lack of good faith by knowingly offering the appellant a 'choice' of returning to Addis Ababa or remaining in Lusaka as a local recruit when in fact the decision had already been made against the first alternative and in favour of the second;
- (3) That the decision that the appellant should remain in Lusaka as a local recruit was of no practical value since it in no way contributed to the solution of either of the two problems it was supposed to resolve;
- (4) That the decision to withdraw the appellant's inter-national recruitment entitlements was made improperly and not in accordance with the Staff Rules.

Recommendations

48. The Panel recommends

- (1) That the appeal be upheld and that the appellant's entitlements as an international recruit be restored retroactively as from 15 March 1983;
- (2) That the appellant be granted two months' net pay (at current rates and including international recruitment allowances) in compensation for the sudden loss of income and for the length of time he was improperly

deprived of his entitlements.

49. The Panel observes that the appellant's periodic evaluation reports issued since 1983 indicate that he has been doing useful work within the field of his expertise in the Lusaka Office and that, apparently, the problems that used to exist between him and his colleagues in that Office have been resolved."

On 20 January 1987 the Assistant Secretary-General for Personnel Services informed the Applicant that the Secretary-General had taken note of the Board's report and had decided:

- "a) To restore your international status and benefits in Lusaka as from 15 March 1983 until such a time as the grounds on the basis of which such international status and benefits were granted cease to exist and the Administration is in a position to have you return to Addis Ababa, and
- b) To take no further action in this case."

On 15 October 1987 the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision to send the Applicant back to Addis Ababa was unjust, irregular and unreasonable.
2. The decision to deny the Applicant his international status was unfounded, unjustified and unsupported in law and in principle.
3. The Secretary-General's final decision should be implemented without further ado.
4. The Applicant should be paid - or reimbursed - accelerated home leave, medical expenses and evacuation, extended installation grant and rental subsidies.

Whereas the Respondent's principal contentions are:

1. The Economic Commission for Africa (ECA) has taken all necessary action to implement the Secretary-General's decision of

20 January 1987 and the Applicant's international benefits have been paid by ECA accordingly.

2. There is no reason for any additional payment of compensation to the Applicant since the Respondent paid his international benefits retroactively.

3. The Applicant has no right to nor any legal expectancy of promotion or transfer to another office, nor can he raise these matters in this proceeding.

The Tribunal, having deliberated from 16 to 31 May 1989, now pronounces the following judgement:

I. In substance, the application before the Tribunal is an appeal against the administrative decision not to implement fully the recommendations of the Joint Appeals Board in its report dated 11 April 1986.

II. The Joint Appeals Board made two recommendations: first, that the Applicant's entitlements as an international recruit be restored retroactively from 15 March 1983 and, second, that he "be granted two months' net pay (at current rates and including international recruitment allowances) in compensation for the sudden loss of income and for the length of time he was improperly deprived of his entitlements".

III. As for the implementation of the first recommendation, the Tribunal notes that, on 1 June 1987, ECA reinstated the Applicant's international status in Lusaka with retroactive effect from 15 March 1983.

Accordingly, the Applicant's salary was paid at GS-6, step 10 at Lusaka rates together with the following:

- (a) Non-resident's allowance, effective from 15 March 1983;
- (b) Educational grant for the school years 1983-1988 for the

Applicant's two children;

(c) ECA authorized the Applicant's 1987 home leave to a country other than his home country for the period 19 November 1987 to 31 December 1987 up to a maximum equivalent to the cost of travel from Lusaka to Addis Ababa and back. His request for 1988 home leave, again to a third country, was denied in accordance with ST/AI/280/Rev.3.

IV. On the additional requests for reimbursement of expenses submitted by the Applicant pursuant to the restoration of his international status in Lusaka, the Tribunal notes that:

(a) The Applicant requested that his medical expenses be reimbursed from 15 March 1983 by the J. Van Breda Medical Insurance Scheme without deducting premiums from his salary. The Tribunal holds that the evidence submitted to it establishes that retroactive payment of medical insurance premiums from 15 March 1983 to 1987 is an indispensable condition for entitlement to retroactive medical insurance coverage.

(b) The Applicant requested to be paid for his evacuation from 14 March 1987 to 13 April 1987 on medical grounds from Lusaka to Harare. The Tribunal notes that the Applicant was paid full Harare per diem for the period from 13 March 1987 to 10 April 1987 and observes that his medical treatment in Harare had been approved only until 10 April 1987, as appears from a memorandum received by ECA from the Applicant's doctor. As there are no valid or certified medical reasons for a more prolonged stay of the Applicant in Harare, the Tribunal holds that he is not entitled to any reimbursement additional to that already paid by ECA.

(c) The Applicant requested retroactive payment of his extended installation grant for an additional 28 days. This claim arose in 1980 when the Applicant was first moved to Lusaka and does not relate to the benefits due to him pursuant to the restoration of his international status from 15 March 1983. In the circumstances, the Tribunal considers that this claim is not receivable; besides,

the Applicant did not raise it with the Joint Appeals Board.

(d) The Applicant requested accelerated home leave entitlement and his travel expenses from Lusaka to Addis Ababa and back from March 1980. The Tribunal observes that the Applicant did not travel to his home country during the period in question and is not therefore entitled to receive home leave travel expenses.

(e) The Applicant requested rental subsidy from March 1983. On 3 May 1989 the Respondent informed the Tribunal that the Applicant had only very recently sent in his lease agreements for the period from 1983 to 1987. The Respondent states that the calculation of the Applicant's rental subsidy is now being made; the Tribunal expresses the hope that due payment will be made without delay.

V. Thus the Tribunal finds that necessary action has been taken or is in progress to give effect to the Secretary-General's decision of 20 January 1987.

VI. As noted above, the second recommendation of the Joint Appeals Board was that the Applicant be granted two months' net pay. This recommendation has been rejected by the Respondent.

VII. While commending the decisions taken by the Administration in favour of the Applicant for humanitarian reasons and its implementation of one of the Joint Appeals Board's recommendations, the Tribunal cannot ignore the fact that the restoration of the international status of the Applicant was decided by the Administration only on 20 January 1987, i.e. nearly four years after the date of the decision to deprive him of international status. Moreover, the restoration of the benefits to the Applicant began only on 1 June 1987.

VIII. In view of the length of the period during which the Administration maintained in force its original decision, the

Tribunal refers to its observation in Judgement No. 414: Apete (1988), para. IX, repeated in Judgement No. 438: Nayyar (1988), para. VIII, that:

"... instances of great delay in the disposal of cases, however brought about, are not only regrettable in themselves, but can lead to denial of justice. In deciding if any award should be given in any specific instance, this consideration is kept in mind and each claim is examined on its merits."

IX. Taking into account the injury caused to the Applicant by the initial decision of the Administration and by its delay in the implementation of corrective action, as well as the obvious suffering of the Applicant during a long period of time, the Tribunal concludes that the Applicant is entitled to some compensation.

X. The other claims made by the Applicant cannot be considered as they were not submitted, as required by article 7.1 of the Tribunal's Statute, to the Joint Appeals Board.

XI. For the foregoing reasons, the Tribunal:

(a) Orders the Respondent to pay to the Applicant two months of his current net base salary;

(b) Rejects all the other pleas.

(Signatures)

Jerome ACKERMAN
Vice-President, presiding

Samar SEN
Member

Ioan VOICU

Member

Geneva, 31 May 1989

Jean HARDY
Acting Executive Secretary